Criminal Law Symposium

Newly Adopted Amendments to the Rules of Criminal Procedure

Circuit Court

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Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2003-04

Amendment of Rules 6.302, 6.425, 6.445, and 6.625 of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments are adopted, effective immediately.

[The present language is amended as indicated below by underlining for new text and strikeover for text that is deleted.]

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A) Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out subrules (B)-(E).

(B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that ~~the~~ each defendant understands:

(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

(2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law;

(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:

(a) to be tried by a jury;

~~(b) to be tried by the court without a jury, if the defendant chooses and the prosecutor and court consent~~

~~(c)~~(b) to be presumed innocent until proved guilty;

~~(d)~~(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;

~~(e)~~(d) to have the witnesses against the defendant appear at the trial;

~~(f)~~(e) to question the witnesses against the defendant;

~~(g)~~(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;

~~(h)~~(g) to remain silent during the trial;

~~(i)~~(h) to not have that silence used against the defendant; and

~~(j)~~(i) to testify at the trial if the defendant wants to testify.

The requirements of this section may be satisfied by a writing on a form approved by the State Court Administrator. If a court uses a writing, the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;

(5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.~~; and~~

~~(6) if the plea is accepted, the defendant is not entitled to have counsel appointed at public expense to assist in filing an application for leave to appeal or to assist with other postconviction remedies unless the defendant is financially unable to retain counsel and~~

~~(a) the defendant's sentence exceeds the guidelines,~~

~~(b) the plea is a conditional plea under MCR 6.301(C)(2),~~

~~(c) the prosecuting attorney seeks leave to appeal, or~~

~~(d) the Court of Appeals or the Supreme Court grants leave to appeal.~~

(C)-(F)[Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A) [Unchanged.]

(B) Presentence Report; Disclosure Before Sentencing. The court must provide copies of the presentence report to ~~permit~~ the prosecutor~~,~~ and the defendant's lawyer, or the defendant if not represented by a lawyer, ~~and the defendant to review the presentence report~~ at a reasonable time before the day of sentencing. The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.

(C) [Unchanged.]

(D) ~~Imposition of Sentence.~~

~~(1)~~ Sentencing Guidelines. The court must use the sentencing guidelines, as provided by law. Proposed scoring of the guidelines shall accompany the presentence report. ~~Not later than the date of sentencing, the court must complete a sentencing information report on a form to be prescribed by and returned to the state court administrator.~~

(E) ~~(2)~~Sentencing Procedure.

(1) The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing, the court~~, complying on the record,~~ must, on the record:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the presentence report,

(b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the presentence report, and resolve any challenges in accordance with the procedure set forth in subrule ~~(D)(3)~~(E)(2),

(c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,

(d) state the sentence being imposed, including the minimum and maximum sentence if applicable, together with any credit for time served to which the defendant is entitled,

(e) if the sentence imposed is not within the guidelines range, articulate ~~its~~ the substantial and compelling reasons ~~for~~ justifying that specific departure ~~imposing the sentence given~~, and

(f) ~~if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action~~ order that the defendant make full restitution as required by law to any victim of the defendant's course of conduct that gives rise to the conviction, or to that victim's estate.

~~(3)~~(2) Resolution of Challenges. If any information in the presentence report is challenged, the court must allow the parties to be heard regarding the challenge, and make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to

(a) correct or delete the challenged information in the report, whichever is appropriate, and

(b) provide defendant's lawyer with an opportunity to review the corrected report before it is sent to the Department of Corrections.

~~(E)~~(F) Advice Concerning the Right to Appeal; Appointment of Counsel.

(1) In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to appellate review of the conviction and sentence,

(b) if the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(c) the request for a lawyer must be made within 42 days after sentencing.

(2) In a case involving a conviction following a plea of guilty or nolo contendere, immediately after imposing sentence, the court must advise the defendant, on the record, that

(a) the defendant is entitled to file an application for leave to appeal~~;~~,

(b) if the defendant is financially unable to retain a lawyer, the ~~court must appoint~~ defendant may request appointment of a lawyer to represent the defendant on appeal ~~if~~, and

~~(i) the defendant's sentence exceeds the upper limit of the minimum sentence range of the applicable sentencing guidelines,~~

~~(ii) the defendant seeks leave to appeal a conditional plea under MCR 6.301(C)(2),~~

~~(iii) the prosecuting attorney seeks leave to appeal, or~~

~~(iv) the Court of Appeals or the Supreme Court grants the defendant's application for leave to appeal.~~

~~(c) If the defendant is financially unable to retain a lawyer, the court, in its discretion, may appoint a lawyer to represent the defendant on appeal if all the following apply:~~

~~(i) the defendant seeks leave to appeal on the basis of an alleged improper scoring of an offense variable or a prior record variable,~~

~~(ii) the defendant objected to the scoring or otherwise preserved the matter for appeal, and~~

~~(iii) the sentence constitutes an upward departure from the upper limit of the minimum sentence range that the defendant alleges should have been scored; and~~

~~(d)~~(c) the request for a lawyer must be made within 42 days after sentencing~~, unless the entitlement to counsel arises under (b)(iii) or (iv)~~.

~~With regard to paragraphs (b) and (c), the court is required to give only the advice that is applicable to the particular circumstances.~~

~~Upon sentencing, the court shall give the defendant a form developed by the State Court Administrative Office that the defendant may complete and file as an application for leave to appeal.~~

(3) The court also must give the defendant a request for counsel form containing an instruction informing the defendant that the form must be completed and returned to the court within 42 days after sentencing if the defendant wants the court to appoint a lawyer. ~~The 42-day time limit does not apply if the entitlement to counsel arises under subrule (2)(b)(iii) or (iv).~~

(4) When imposing sentence in a case in which sentencing guidelines enacted in 1998 PA 317, MCL 777.1 *et seq*., are applicable, if the court imposes a minimum sentence that is longer or more severe than the range provided by the sentencing guidelines, the court must advise the defendant on the record and in writing that the defendant may seek appellate review of the sentence, by right if the conviction followed trial or by application if the conviction entered by plea, on the ground that it is longer or more severe than the range provided by the sentencing guidelines.

~~(F)~~(G) Appointment of Lawyer; Trial Court Responsibilities in Connection with Appeal.

(1) Appointment of Lawyer.

(a) Unless there is a postjudgment motion pending, the court must rule on a defendant's request for a lawyer within 14 days after receiving it. If there is a postjudgment motion pending, the court must rule on the request after the court's disposition of the pending motion and within 14 days after that disposition.

(b) In a case involving a conviction following a trial, if the defendant is indigent, the court must enter an order appointing a lawyer if the request is filed within 42 days after sentencing or within the time for filing an appeal of right. The court should liberally grant an untimely request as long as the defendant may file an application for leave to appeal.

(c) In a case involving a conviction following a plea of guilty or nolo contendere, the court should liberally grant the request if it is filed within 42 days after sentencing.

~~(e)~~(d) Scope of Appellate Lawyer's Responsibilities. The responsibilities of the appellate lawyer appointed to represent the defendant include representing the defendant

(i) in available postconviction proceedings in the trial court the lawyer deems appropriate,

(ii) in postconviction proceedings in the Court of Appeals,

(iii) in available proceedings in the trial court the lawyer deems appropriate under MCR 7.208(B) or 7.211(C)(1), and

(iv) as appellee in relation to any postconviction appeal taken by the prosecutor.

(2) Order to Prepare Transcript. The appointment order also must

(a) direct the court reporter to prepare and file, within the time limits specified in MCR 7.210,

(i) the trial or plea proceeding transcript,

(ii) the sentencing transcript, and

(iii) such transcripts of other proceedings, not previously transcribed, that the court directs or the parties request, and

(b) provide for the payment of the reporter's fees.

The court must promptly serve a copy of the order on the prosecutor, the defendant, the appointed lawyer, the court reporter, and the Michigan Appellate Assigned Counsel System. If the appointed lawyer timely requests additional transcripts, the trial court shall order such transcripts within 14 days after receiving the request.

(3) Order as Claim of Appeal; Trial Cases. In a case involving a conviction following a trial, if the defendant's request for a lawyer, timely or not, was made within the time for filing a claim of appeal, the order described in ~~(F)~~ subrules (G)(1) and (2) must be entered on a form approved by the State Court ~~Administrator's~~ Administrative Office, entitled "Claim of Appeal and Appointment of Counsel," and the court must immediately send to the Court of Appeals a copy of the order and a copy of the judgment being appealed. The court also must file in the Court of Appeals proof of having made service of the order as required in subrule ~~(F)~~(G)(2). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

Rule 6.445 Probation Revocation

(A)-(E)[Unchanged.]

(F) Pleas of Guilty. ~~With the consent of the court that granted probation, the~~ The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B)~~, (D)(2)~~ and ~~(D)(3)~~ (E).

(H) [Unchanged.]

Rule 6.625 Appeal~~; Appointment of Lawyer~~

An appeal from a misdemeanor case is governed by subchapter 7.100. ~~An indigent defendant who pleads guilty, guilty but mentally ill, or nolo contendere is entitled to the assistance of assigned appellate counsel at public expense if the prosecution seeks leave to appeal or the Court of Appeals or the Supreme Court grants the defendant's application for leave to appeal.~~

Staff Comment: On March 12, 2002, the Court appointed the Committee on the Rules of Criminal Procedure to review the rules to determine whether any of the provisions should be revised. The committee issued its report on June 16, 2003,

recommending numerous amendments of MCR 6.302 and 6.725. The committee did not recommend any amendments of MCR 6.625. A public hearing on the committee's recommendations was held May 27, 2004.

The Court adopted most of the committee's recommendations regarding Rule 6.302, and modified the rule to conform to the ruling of the United States Supreme Court in *Halbert v Michigan,* 545 US ___; 2005 WL 1469183 (June 23, 2005).

The Court adopted many of the committee's recommendations concerning MCR 6.425, however the Court eliminated the requirement that "[n]ot later than the date of sentencing, the court must complete a sentencing information report on a form to be prescribed by and returned to the state court administrator" in MCR 6.425(D). The Court also modified the language of the rule to incorporate the Court's holding in *People v Babcock,* 469 Mich 247 (2003) and to conform to the ruling in *Halbert*.

The Court did not follow the committee's recommendation that MCR 6.625 not be amended, but instead modified the rule to conform to the ruling in *Halbert*.

The staff comment is not an authoritative construction by the Court.

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2003-04

Amendment of Administrative
Order No. 2000-3

On order of the Court, Administrative Order No. 2000-3 is amended as follows, effective January 1, 2006.

[The present language is amended as indicated below by strikeover for text that is deleted.]

Administrative Order 2000-3.
Video Proceedings
(Circuit and District Courts)

On order of the Court, Administrative Orders 1990-1, 1991-2, 1992-1, and 1993-1 are rescinded.

~~The State Court Administrator is authorized, until further order of this Court, to approve the use of two-way interactive video technology in the criminal divisions of the circuit and district courts to conduct the following proceedings between a courtroom and a prison, jail, or other place of detention: initial arraignments on the warrant, arraignments on the information, pretrials, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.~~

~~Each court seeking to use interactive video technology must submit a local administrative order for approval by the State Court Administrator pursuant to MCR 8.112(B), describing how the program will be implemented and the administrative procedures for each type of hearing for which interactive video technology will be used. Upon a court's filing of a local administrative order, the State Court Administrative Office shall either approve the order or return the order to the chief circuit or district judge for amendment in accordance with requirements and guidelines provided by the Sate Court Administrative Office.~~

~~Courts that previously were authorized to use interactive video technology pursuant to Administrative Orders 1990-1, 1991-2, 1992-1, or 1993-1 may continue to do so until further order of this Court or the State Court Administrator.~~

~~The State Court Administrative Office shall assist courts in implementing the technology, and shall report periodically to this Court regarding its assessment of the program. Those courts using the technology shall provide statistics and otherwise cooperate with the State Court Administrative Office in monitoring the use of two-way video proceedings.~~

Staff Comment: Effective January 1, 2006, video and audio proceedings are governed by MCR 6.006.

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2003-04

Amendment of Administrative
Order No. 1988-4

On order of the Court, Administrative Order No. 1988-4 is amended as follows, effective immediately.

[The present language is amended as indicated below by strikeover for text that is deleted.]

Administrative Order 1988-4.
Sentencing Guidelines

Administrative Order 1985-2, 420 Mich lxii, and Administrative Order 1984-1, 418 Mich lxxx, are rescinded as of October 1, 1988. The Sentencing Guidelines Advisory Committee is authorized to issue the second edition of the sentencing guidelines, to be effective October 1, 1988. Until further order of the Court, every judge of the circuit court ~~and of the Recorder's Court of the City of Detroit~~ must thereafter use the second edition of the sentencing guidelines when imposing a sentence for an offense that is included in the guidelines.

~~In accordance with the directions found in the second edition of the sentencing guidelines, every judge of the circuit court and of the Recorder's Court of the City of Detroit must, not later than the date of sentencing, complete a sentencing information report on a form to be prescribed by and returned to the state court administrator.~~ Whenever a judge of the circuit court ~~or of the Recorder's Court of the City of Detroit~~ determines that a minimum sentence outside the recommended minimum range should be imposed, the judge may do so. When such a sentence is imposed, the judge must explain ~~on the sentencing information report and~~ on the record the aspects of the case that have persuaded the judge to impose a sentence outside the recommended minimum range.

~~The Sentencing Guidelines Advisory Committee shall continue to analyze the data and the departure reasons provided by the judges of the circuit court and of the Recorder's Court of the City of Detroit and shall, at least annually, report to the Court the committee's evaluation of the status, effect, strengths, and weaknesses of the guidelines.~~

Staff Comment: The amendment of MCR 6.425(D), effective immediately, eliminated the requirement that the sentencing court complete a sentencing information report. Given this amendment of MCR 6.425(D), and because the judge is required to explain any departure on the record, the requirement that the judge complete a sentencing information report was also stricken from this administrative order. References to the Recorder's Court of the City of Detroit and the Sentencing Guidelines Advisory Committee were also stricken because they no longer exist.

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2003-04

Amendment of Rules 2.510, 2.511, 6.001, 6.004, 6.005, 6.102, 6.104, 6.106, 6.107, 6.110, 6.112, 6.113, 6.201, 6.303, 6.304, 6.310, 6.311, 6.402, 6.412, 6.414, 6.419, 6.420, 6.427, 6.429, 6.431, 6.610, 6.615, and 6.620; and the adoption of Rules 6.006, 6.111, and 6.428 of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments are adopted, effective January 1, 2006.

[The present language is amended as indicated below by underlining for new text and strikeover for text that is deleted.]

Rule 2.510 Juror Personal History Questionnaire

(A)-(C)[Unchanged.]

(D) Summoning Jurors for Court Attendance. The court clerk, the court administrator, the sheriff, or the jury board, as designated by the chief judge, shall summon jurors for court attendance at the time and in the manner directed by the chief judge~~, the presiding judge,~~ or the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service must be by written notice addressed to the juror at ~~his or her~~ the juror's residence as shown by the records of the clerk or jury board. The notice may be by ordinary mail or by personal service. For later service, notice may be in the manner directed by the court. The person giving notice to jurors shall keep a record of the notice and make a return if directed by the court. The return is presumptive evidence of the fact of service.

Rule 2.511 Impaneling the Jury

(A)-(C)[Unchanged.]

(D) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. It is grounds for a challenge for cause that the person:

(1) is not qualified to be a juror;

~~(2) has been convicted of a felony;~~

~~(3)~~(2) is biased for or against a party or attorney;

~~(4)~~(3) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

~~(5)~~(4) has opinions or conscientious scruples that would improperly influence the person's verdict;

~~(6)~~(5) has been subpoenaed as a witness in the action;

~~(7)~~(6) has already sat on a trial of the same issue;

~~(8)~~(7) has served as a grand or petit juror in a criminal case based on the same transaction;

~~(9)~~(8) is related within the ninth degree (civil law) of consanguinity or affinity to one of the parties or attorneys;

~~(10)~~(9) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;

~~(11)~~(10) is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or has been accused by that party in a criminal prosecution;

~~(12)~~(11) has a financial interest other than that of a taxpayer in the outcome of the action;

~~(13)~~(12) is interested in a question like the issue to be tried.

Exemption from jury service is the privilege of the person exempt, not a ground for challenge.

(E) Peremptory Challenges.

(1) A juror peremptorily challenged is excused without cause.

(2) Each party may peremptorily challenge three jurors. Two or more parties on the same side are considered a single party for purposes of peremptory challenges.

However, when multiple parties having adverse interests are aligned on the same side, three peremptory challenges are allowed to each party represented by a different attorney, and the court may allow the opposite side a total number of peremptory challenges not exceeding the total number of peremptory challenges allowed to the multiple parties.

(3) Peremptory challenges must be exercised in the following manner:

(a) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.

(b) A "pass" is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

(c) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise ~~his or her~~ their remaining peremptory challenges until ~~they~~ such challenges are exhausted.

(F) Replacement of Challenged Jurors. After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. ~~before further challenges are made. This juror is~~ Such jurors are subject to challenge as are ~~other~~ previously seated jurors.

(G) [Unchanged.]

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

(B) Misdemeanor Cases. MCR 6.001-6.004, 6.006, 6.102, 6.106, 6.125, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E)[Unchanged.]

Rule 6.004 Speedy Trial

(A) Right to Speedy Trial. The defendant and the people are entitled to a speedy trial and to a speedy resolution of all matters before the court. Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.

(B) [Unchanged.]

(C) Delay in Felony and Misdemeanor Cases; Recognizance Release. In a felony case in which the defendant has been incarcerated for a period of ~~6 months~~ 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, or in a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community. In computing the 28-day and ~~6 month~~ 180-day periods, the court is to exclude

(1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,

(2) the period of delay during which the defendant is not competent to stand trial,

(3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,

(4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either

(a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or

(b) exceptional circumstances justifying the need for more time to prepare the state's case,

(5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

(D) Untried Charges Against State Prisoner.

(1) The 180-Day Rule. Except for crimes exempted by MCL 780.131(2), ~~the prosecutor must make a good faith effort to bring a criminal charge~~ the inmate shall be brought to trial within 180 days ~~of either of the following:~~

~~(a) the time from which the prosecutor knows that the person charged with the offense is incarcerated in a state prison or is detained in a local facility awaiting incarceration in a state prison, or~~

~~(b) the time from which the Department of Corrections knows or has reason to know that a criminal charge is pending against a defendant incarcerated in a state prison or detained in a local facility awaiting incarceration in a state prison.~~

~~For purposes of this subrule, a person is charged with a criminal offense if a warrant, complaint, or indictment has been issued against the person.~~

after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

(2) Remedy. ~~In cases covered by subrule (1)(a), the defendant is entitled to have the charge dismissed with prejudice if the prosecutor fails to make a good faith effort to bring the charge to trial within the 180-day period. When, in cases covered by subrule (1)(b), the prosecutor's failure to bring the charge to trial is attributable to lack of notice from the Department of Corrections, the defendant is entitled to sentence credit for the period of delay. Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.~~ In the event that action is not commenced on the matter for which request for disposition was made as required in subsection (1), no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

(A)-(D)[Unchanged.]

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial, or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) the defendant must reaffirm that a lawyer's assistance is not wanted; or

(2) if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or

(3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F)-(G)[Unchanged.]

(H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer appointed to represent the defendant include

(1) representing the defendant in all trial court proceedings ~~including~~ through initial sentencing ~~and proceedings leading to possible revocation of youthful trainee status~~,

(2) filing of interlocutory appeals the lawyer deems appropriate,

(3) responding to any preconviction appeals by the prosecutor, and

(4) unless an appellate lawyer has been appointed, filing of postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.

(I) [Unchanged.]

Rule 6.006 Video and Audio Proceedings

(A) Defendant at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignment on the warrant, arraignments on the information, pretrials, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

(B) Defendant in the Courtroom – Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

(C) Defendant in the Courtroom – Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

(1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;

(2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(D) Mechanics of Use. The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

Rule 6.102 Arrest on a Warrant

(A)-(C)[Unchanged.]

(D) Warrant Specification of Interim Bail. Where permitted by law, the ~~The~~ court may specify on the warrant the bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.

(E)-(F)[Unchanged.]

Rule 6.104 Arraignment on the Warrant or Complaint

(A) Arraignment Without Unnecessary Delay. Unless released beforehand, an arrested person must be taken without unnecessary delay before a court for arraignment in accordance with the provisions of this rule, or must be arraigned without unnecessary delay by use of two-way interactive video technology in accordance with MCR 6.006(A).

(B) Place of Arraignment. An accused arrested pursuant to a warrant must be taken to a court specified in the warrant. An accused arrested without a warrant must be taken to a court in the judicial district in which the offense allegedly occurred. If the arrest occurs outside the county in which these courts are located, the arresting agency must make arrangements with the authorities in the demanding county to have the accused promptly transported to the latter county for arraignment in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the accused must be taken without unnecessary delay before the nearest available court for preliminary appearance in accordance with subrule (C). In the alternative, the provisions of this subrule may be satisfied by use of two-way interactive video technology in accordance with MCR 6.006(A).

(C) Preliminary Appearance Outside County of Offense. When, under subrule (B), an accused is taken before a court outside the county of the alleged offense either in person or by way of two-way interactive video technology, the court must advise the accused of the rights specified in subrule (E)(2) and determine what form of pretrial release, if any, is appropriate. To be released, the accused must submit a recognizance for appearance within the next 14 days before a court specified in the arrest warrant or, in a case involving an arrest without a warrant, before either a court in the judicial district in which the offense allegedly occurred or some other court designated by that court. The court must certify the recognizance and have it delivered or sent without delay to the appropriate court. If the accused is not released, the arresting agency must arrange prompt transportation to the judicial district of the offense. In all cases, the arraignment is then to continue under subrule (D), if applicable, and subrule (E) either in the judicial district of the alleged offense or in such court as otherwise is designated.

(D)-(G)[Unchanged.]

Rule 6.106 Pretrial Release

(A)-(C)[Unchanged.]

(D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including

(1) that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, and

(2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to

(a) make reports to a court agency as are specified by the court or the agency;

(b) not use alcohol or illicitly use any controlled substance;

(c) participate in a substance abuse testing or monitoring program;

(d) participate in a specified treatment program for any physical or mental condition, including substance abuse;

(e) comply with restrictions on personal associations, place of residence, place of employment, or travel;

(f) surrender driver's license or passport;

(g) comply with a specified curfew;

(h) continue to seek employment;

(i) continue or begin an educational program;

(j) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;

(k) not possess a firearm or other dangerous weapon;

(l) not enter specified premises or areas and not assault, beat, molest, or wound a named person or persons;

(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take

precedence over the other court order until the conflict is resolved.

~~(m)~~(n) satisfy any injunctive order made a condition of release; or

~~(n)~~(o) comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

(E) Money Bail. If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

(1) The court may require the defendant to

(a) post ~~a bond that~~, at the defendant's option, ~~is executed~~

(i) a surety bond that is executed by a surety approved by the court in an amount equal to ¼ of the full bail amount, or

(ii) bail that is executed by the defendant, or by another who is not a ~~licensed~~ surety approved by the court, and secured by

[A] a cash deposit, or its equivalent, for the full ~~bond~~ bail amount, or

[B] a cash deposit of 10 percent of the ~~bond~~ full bail amount, or, with the court's consent,

[C] designated real property; or

(b) post ~~a bond that~~, at the defendant's option, ~~is executed~~

(i) a surety bond that is executed by a surety approved by the court in an amount equal to the full bail amount, or

(ii) bail that is executed by the defendant, or by another who is not a ~~licensed~~ surety approved by the court, and secured by

[A] a cash deposit, or its equivalent, for the full ~~bond~~ bail amount, or, with the court's consent,

[B] designated real property.

(2) The court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

(F) [Unchanged.]

(G) Custody Hearing.

(1) Entitlement to Hearing. A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to subrule (B) and ~~the defendant requests a custody hearing~~ a custody hearing is requested by either the defendant or the prosecutor. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to subrule (B).

(2) Hearing Procedure.

(a) At the custody hearing, the defendant is entitled to be present and to be represented by a lawyer, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses.

(b) The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under subrule (B)(1), the defendant must be ordered released under subrule (C) or (D). A verbatim record of the hearing must be made.

(H) [Unchanged.]

(I) Termination of Release Order.

(1) If the conditions of the release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bail or bond, and return the cash (or its equivalent) posted in the full amount of ~~a bond~~ the bail, or, if there has been a deposit of 10 percent of the ~~bond~~ full bail amount, return 90 percent of the deposited money and retain 10 percent.

(2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

(a) The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bail or bond has been ordered, to anyone who posted bail or bond.

(b) If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the ~~entire~~ full amount of the ~~bond~~ bail, or if a surety bond was posted an amount not to exceed the full amount of the surety bond, and costs of the court proceedings. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court.

(c) The 10 percent ~~bond~~ bail deposit made under subrule (E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court ~~or recorder's court~~ case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.

(3) If money was deposited on a bail or bond executed by the defendant, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to subrule (I)(1).

Rule 6.107 Grand Jury Proceedings

(A) [Unchanged.]

(B) Procedure to Obtain Records.

(1) To obtain the part of the record and transcripts specified in subrule (A), a motion must be addressed to the chief judge of the circuit court in the county in which the grand jury issuing the indictment was convened~~, or, if the grand jury convened on the order of the Recorder's Court for the City of Detroit, then to the chief judge of that court~~.

(2) The motion must be filed within 14 days after arraignment on the indictment or at a reasonable time thereafter as the court may permit on a showing of good cause and a finding that the interests of justice will be served.

(3) On receipt of the motion, the chief judge shall order the entire record and transcript of testimony taken before the grand jury to be delivered to ~~him or her~~ the chief judge by the person having custody of it for an in camera inspection by the chief judge.

(4) Following the in camera inspection, the chief judge shall certify the parts of the record, including the testimony of all grand jury witnesses that touches on the guilt or innocence of the accused, as being all of the evidence bearing on that issue contained in the record, and have two copies of it prepared, one to be delivered to the attorney for the accused, or to the accused if not represented by an attorney, and one to the attorney charged with the responsibility for prosecuting the indictment.

(5) The chief judge shall then have the record and transcript of all testimony of grand jury witnesses returned to the person from whom it was received for disposition according to law.

Rule 6.110 The Preliminary Examination

(A) Right to Preliminary Examination. Where a preliminary examination is permitted by law, the ~~The~~ people and the defendant are entitled to a prompt preliminary examination. If the court permits the defendant to waive the preliminary examination, it must bind the defendant over for trial on the charge set forth in the complaint or ~~indictment~~ any amended complaint.

(B) Time of Examination; Remedy. ~~(1)~~ Unless adjourned by the court, the preliminary examination must be held on the date specified by the court at the arraignment on the warrant or complaint. If the parties consent, for good cause shown, the court may adjourn the preliminary examination for a reasonable time. If a party objects, the ~~The~~ court may not adjourn a preliminary examination unless it makes a finding on the record of good cause shown for the adjournment. A violation of this subrule is deemed to be harmless error unless the defendant demonstrates actual prejudice.

~~(2) The issues whether the preliminary examination was timely held or the requisite record showing for delay was made must be raised, if at all, in a written or oral motion no later than immediately before the commencement of the preliminary examination. To challenge the denial of a timely motion, the defendant must before the trial either file a timely application for leave to appeal with the trial court or, within 21 days after the filing of the information in the trial court, file a motion to dismiss in the trial court. If relief is denied by the trial court, a defendant who wishes to obtain further review must file a timely application with the Court of Appeals, and, if relief is denied by the Court of Appeals, a further timely application with the Supreme Court. A defendant may not after conviction seek relief on the basis of a violation of subrule (B)(1).~~

(C)-(I)[Unchanged.]

Rule 6.111 Circuit Court Arraignment in District Court

(A) If the defendant, the defense attorney, and the prosecutor consent on the record, the circuit court arraignment may be conducted and a plea of not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity may be taken by a district judge in criminal cases cognizable in the circuit court immediately after the bindover of the defendant. Following a plea, the case shall be transferred to the circuit court where the circuit judge shall preside over further proceedings, including sentencing.

(B) Arraignments conducted pursuant to this rule shall be conducted in conformity with MCR 6.113.

(C) Pleas taken pursuant to this rule shall be taken in conformity with MCR 6.301, 6.302, 6.303, and 6.304, as applicable, and, once taken, shall be governed by MCR 6.310.

(D) Each court intending to utilize this rule shall submit a local administrative order to the State Court Administrator pursuant to MCR 8.112(B) to implement the rule.

Rule 6.112 The Information or Indictment

(A) [Unchanged.]

(B) Use of Information or Indictment. A prosecution must be based on an information or an indictment. Unless the defendant is a fugitive from justice, the prosecutor may not file an information until the defendant has had or waives a preliminary examination. An indictment ~~may be~~ is returned and filed ~~before a defendant's~~ without a preliminary examination. When this occurs, the indictment ~~may substitute for the complaint and~~ shall commence judicial proceedings.

(C) Time of Filing Information or Indictment. The prosecutor must file the information or indictment on or before the date set for the arraignment.

(D) Information; Nature and Contents; Attachments. The information must set forth the substance of the accusation against the defendant and the name, statutory citation, and penalty of the offense allegedly committed. If applicable, the information must also set forth the notice required by MCL 767.45, and the defendant's Michigan driver's license number. To the extent possible, the information should specify the time and place of the alleged offense. Allegations relating to conduct, the method of committing the offense, mental state, and the consequences of conduct may be stated in the alternative. A list ~~must be attached to the information~~ of all witnesses known to the prosecutor who ~~might~~ may be called at trial and all res gestae witnesses known to the prosecutor or investigating law enforcement officers must be attached to the information. A prosecutor must sign the information.

(E) [Unchanged.]

(F) Notice of Intent to Seek Enhanced Sentence. A notice of intent to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for purposes of sentence enhancement. The notice must be filed within 21 days after the ~~defendant is arraigned or has waived arraignment on the information charging the underlying felony, or before trial begins, if the defendant is tried within the 21-day period~~ defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense.

(G)-(H)[Unchanged.]

Rule 6.113 The Arraignment on the Indictment or Information

(A) Time of Conducting. Unless the defendant waives arraignment or the court for good cause orders a delay, or as otherwise permitted by these rules, the court with trial jurisdiction must arraign the defendant on the scheduled date. The court may hold the arraignment before the preliminary examination transcript has been prepared and filed. Unless the defendant demonstrates actual prejudice, failure to hold the arraignment on the scheduled date is to be deemed harmless error.

(B)-(C)[Unchanged.]

(D) Preliminary Examination Transcript. ~~Unless the defendant pleads guilty at the arraignment or the parties otherwise agree, the court must order the~~ The court reporter ~~to~~ shall transcribe and file the record of the preliminary examination if such is demanded or ordered pursuant to MCL 766.15. ~~The order must also provide for the payment of the reporter's fees.~~

(E) Elimination of Arraignments. A circuit court may submit to the State Court Administrator pursuant to MCR 8.112(B) a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information.

Rule 6.201 Discovery

(A) Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:

(1) the names and addresses of all lay and expert witnesses whom the party ~~intends to~~ may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview; the witness list may be amended without leave of the court no later than 28 days before trial;

(2) any written or recorded statement pertaining to the case by a lay witness whom the party ~~intends to~~ may call at trial, except that a defendant is not obliged to provide the defendant's own statement;

(3) ~~any report of any kind produced by or for an expert witness whom the party intends to call at trial;~~ the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion;

(4) any criminal record that the party ~~intends to~~ may use at trial to impeach a witness;

(5) ~~any document, photograph, or other paper that the party intends to introduce at trial; and~~ a description or list of criminal convictions, known to the defense attorney or prosecuting attorney, of any witness whom the party may call at trial; and

(6) a description of and an opportunity to inspect any tangible physical evidence that the party ~~intends to~~ may introduce at trial**,** including any document, photograph, or other paper, with copies to be provided on request. A party may request a hearing regarding any question of costs of reproduction. On good cause shown, the court may order that a party be given the opportunity to test without destruction ~~such~~ any tangible physical evidence.

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) any exculpatory information or evidence known to the prosecuting attorney;

(2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation;

(3) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;

(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and

(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).

(2) If a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an ~~in-camera~~ in camera inspection of the records.

(a) If the privilege is absolute, and the privilege holder refuses to waive the privilege to permit an ~~in-camera~~ in camera inspection, the trial court shall suppress or strike the privilege holder's testimony.

(b) If the court is satisfied, following an ~~in-camera~~ in camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony.

(c) Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review.

(d) The court shall seal and preserve the records for review in the event of an appeal

(i) by the defendant, on an interlocutory basis or following conviction, if the court determines that the records should not be made available to the defense, or

(ii) by the prosecution, on an interlocutory basis, if the court determines that the records should be made available to the defense.

(e) Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide.

(D) [Unchanged.]

(E) Protective Orders. On motion and a showing of good cause, the court may enter an appropriate protective order. In considering whether good cause exists, the court shall consider the parties' interests in a fair trial; the risk to any person of harm, undue annoyance, intimidation, embarrassment, or threats; the risk that evidence will be fabricated; and the need for secrecy regarding the identity of informants or other law enforcement matters. On motion, with notice to the other party, the court may permit the showing of good cause for a protective order to be made in camera. If the court grants a protective order, it must seal and preserve the record of the hearing for review in the event of an appeal.

(F) Timing of Discovery. Unless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within ~~7~~ 21 days of a request under this rule and a defendant must comply with the requirements of this rule within ~~14~~ 21 days of a request under this rule.

(G)-(I)[Unchanged.]

(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order ~~that testimony or evidence be excluded, or may order another remedy~~ the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. Parties are encouraged to bring questions of noncompliance before the court at the earliest opportunity. Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. An order of the court under this section is reviewable only for abuse of discretion.

Rule 6.303 Plea of Guilty but Mentally Ill

Before accepting a plea of guilty but mentally ill, the court must comply with the requirements of MCR 6.302. In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill~~, but not insane,~~ at the time of the offense to which the plea is entered. The reports must be made a part of the record.

Rule 6.304 Plea of Not Guilty by Reason of Insanity

(A) [Unchanged.]

(B) Additional Advice Required. After complying with the applicable requirements of MCR 6.302, the court must advise the defendant, and determine whether the defendant understands, that the plea will result in the defendant's commitment for diagnostic examination at the center ~~of~~ for forensic psychiatry for up to 60 days, and that after the examination, the probate court may order the defendant to be committed for an indefinite period of time.

(C) Factual Basis. Before accepting a plea of not guilty by reason of insanity, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for findings that

(1) the defendant committed the acts charged, and

(2) ~~a reasonable doubt exists about the defendant's legal sanity at the time of the offense.~~ that, by a preponderance of the evidence, the defendant was legally insane at the time of the offense.

(D) [Unchanged.]

Rule 6.310 Withdrawal or Vacation of Plea ~~Before Acceptance or Sentence~~

(A) [Unchanged.]

(B) Withdrawal After Acceptance but Before Sentence. ~~On~~ After acceptance but before sentence,

(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent~~, the court~~ only in the interest of justice, ~~may permit an accepted plea to be withdrawn before sentence is imposed unless~~ and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based

on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by ~~MCR 6.311(B)~~ subrule (C)**.**

(2) the defendant is entitled to withdraw the plea if

(a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

(C) Motion to Withdraw Plea After Sentence. The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

(D) Preservation of Issues. A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.

~~(C)~~(E) Vacation of Plea ~~Before Sentence~~ on Prosecutor's Motion. On the prosecutor's motion, the court may vacate a plea ~~before sentence is imposed~~ if the defendant has failed to comply with the terms of a plea agreement.

~~Rule 6.311 Challenging Plea After Sentence~~

~~(A) Motion to Withdraw Plea. The defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal. After the time for filing an application for leave, the defendant may seek relief in accordance with the procedure set forth in subchapter 6.500.~~

~~(B) Remedy. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.~~

~~(C) Preservation of Issues. A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.~~

Rule 6.402 Waiver of Jury Trial by the Defendant

(A) Time of Waiver. The court may not accept a waiver of trial by jury until after the defendant has ~~had~~ been arraigned or has waived an arraignment on the information, or, in a court where arraignment on the information has been eliminated under MCR 6.113(E), after the defendant has otherwise been provided with a copy of the information, and has been offered an opportunity to consult with a lawyer.

(B) [Unchanged.]

Rule 6.412 Selection of the Jury

(A)-(E)[Unchanged.]

(F) ~~Instructions and~~ Oath After Selection. After the jury is selected and before trial begins, the court must have the jurors sworn ~~and should give them appropriate pretrial instructions~~.

Rule 6.414 Conduct of Jury Trial

(A) Before trial begins, the court should give the jury appropriate pretrial instructions.

~~(A)~~(B) [Relettered but otherwise unchanged.]

~~(B)~~(C) Opening Statements. Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor's case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable time limits on the opening statements.

~~(C)~~(D) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes and that they should not permit note taking to interfere with their attentiveness. The court also must instruct the jurors ~~both~~ to keep their notes confidential except as to other jurors during deliberations ~~and to destroy their notes when the trial is concluded~~. The court may, but need not, allow jurors to take their notes into deliberations. If the court decides not to permit the jurors to take their notes into deliberations, the court must so inform the jurors at the same time it permits the note taking. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.

(E) Juror Questions. The court may, in its discretion, permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.

~~(D)~~(F) View. The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no persons other than, as permitted by the trial judge, the officer ~~designated by the court~~ in charge of the jurors, or any person appointed by the court to direct the jurors' attention to a particular place or site, and the trial judge, may speak to the jury concerning a subject connected with the trial; any such communication must be recorded in some fashion.

~~(E)~~(G)Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.

~~(F)~~(H) Instructions to the Jury. Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but ~~with the parties' consent~~ at the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments**,** and give any appropriate further instructions after argument. After jury deliberations begin, the court may give additional instructions that are appropriate.

~~(G)~~(I)-~~(H)~~(J) [Relettered but otherwise unchanged.]

Rule 6.419 Motion for Directed Verdict of Acquittal

(A) Before Submission to Jury. After the prosecutor has rested the prosecution's ~~case in chief~~ case-in-chief and before the defendant presents proofs, the court on its own initiative may,

or on the defendant's motion must, direct a verdict of acquittal on any charged offense as to which the evidence is insufficient to support conviction. The court may not reserve decision on the defendant's motion. If the defendant's motion is made after the defendant presents proofs, the court may reserve decision on the motion, submit the case to the jury, and decide the motion before or after the jury has completed its deliberations.

(B) [Unchanged.]

(C) Bench Trial. In an action tried without a jury, after the prosecutor has rested the prosecution's case-in-chief, the defendant, without waiving the right to offer evidence if the motion is not granted, may move for acquittal on the ground that a reasonable doubt exists. The court may then determine the facts and render a verdict of acquittal, or may decline to render judgment until the close of all the evidence. If the court renders a verdict of acquittal, the court shall make findings of fact.

~~(C)~~(D)-~~(D)~~(E) [Relettered but otherwise unchanged.]

Rule 6.420 Verdict

(A)-(B)[Unchanged.]

(C) Several Counts. If a defendant is charged with two or more counts, and the court determines that the jury is deadlocked so that a mistrial must be declared, the court may inquire of the jury whether it has reached a unanimous verdict on any of the counts charged, and, if so, may accept the jury's verdict on that count or counts.

~~(C)~~(D) [Relettered but otherwise unchanged.]

Rule 6.427 Judgment

Within 7 days after sentencing, the court must date and sign a written judgment of sentence that includes:

(1) the title and file number of the case;

(2) the defendant's name;

(3) the crime for which the defendant was convicted;

(4) the defendant's plea;

(5) the name of the defendant's attorney if one appeared;

(6) the jury's verdict or the finding of guilt by the court;

(7) the term of the sentence;
(8) the place of detention;

(9) the conditions incident to the sentence; and

(10) whether the conviction is reportable to the Secretary of State pursuant to ~~MCL 257.732~~ statute, and, if so, the defendant's Michigan driver's license number.

If the defendant was found not guilty or for any other reason is entitled to be discharged, the court must enter judgment accordingly. The date a judgment is signed is its entry date.

Rule 6.428 Reissuance of Judgment.

If the defendant did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, the trial court shall issue an order restarting the time in which to file an appeal of right.

Rule 6.429 Correction and Appeal of Sentence

(A) Authority to Modify Sentence. A motion to correct an invalid sentence may be filed by either party. The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law.

(B) Time for Filing Motion.

(1) A motion ~~for resentencing~~ to correct an invalid sentence may be filed ~~within 42 days after entry of the judgment~~ before the filing of a timely claim of appeal.

(2) If a claim of appeal has been filed, a motion ~~for resentencing~~ to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, ~~the defendant may file~~ a motion ~~for resentencing~~ to correct an invalid sentence may be filed within ~~the time for filing an application for leave to appeal~~ 6 months of entry of the judgment of conviction and sentence.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

(C) [Unchanged.]

Rule 6.431 New Trial

(A) Time for Making Motion.

(1) A motion for a new trial may be filed ~~within 42 days after entry of the judgment~~ before the filing of a timely claim of appeal.

(2) If a claim of appeal has been filed, a motion for a new trial may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, ~~the defendant may file~~ a motion for a new trial may be filed within ~~the time for filing an application for leave to appeal~~ 6 months of entry of the judgment of conviction and sentence.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

(B)-(D)[Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A) [Unchanged.]

(B) Pretrial. The court, on its own initiative or on motion of either party, may direct the prosecutor and the defendant**,** and, if represented, ~~or~~ the defendant's attorney to appear for a pretrial conference. The court may require collateral matters and pretrial motions to be filed and argued no later than this conference.

(C) [Unchanged.]

(D) Arraignment; District Court Offenses.

(1) Whenever a defendant is arraigned on an offense over which the district court has jurisdiction, ~~he or she~~ the defendant must be informed of

(a) the name of the offense;

(b) the maximum sentence permitted by law; and

(c) the defendant's right

(i) to the assistance of an attorney and to a trial;
(ii) (if subrule [D][2] applies) to an appointed attorney; and

(iii) ~~(unless he or she is charged under an ordinance that does not correspond to a criminal statute or permit a jail sentence)~~ to a trial by jury**,** when required by law.

The information may be given in a writing that is made a part of the file or by the court on the record.

(2) An indigent defendant has a right to an appointed attorney whenever

~~(a)~~ the offense charged requires on conviction a minimum term in jail~~,~~ or the court determines it might sentence to a term of incarceration, even if suspended.

~~(b) the court determines that it might sentence the defendant to jail.~~

If an indigent defendant is without an attorney and has not waived the right to an appointed attorney, the court may not sentence the defendant to jail or to a suspended jail sentence.

(3) The right to the assistance of an attorney, to an appointed attorney, or to a trial by jury is not waived unless the defendant

(a) has been informed of the right; and

(b) has waived it in a writing that is made a part of the file or orally on the record.

(4) The court may allow a defendant to enter a plea of not guilty or to stand mute without formal arraignment by filing a written statement signed by the defendant and any defense attorney of record, reciting the general nature of the charge, the maximum possible sentence, the rights of the defendant at arraignment, and the plea to be entered. The court may require that an appropriate bond be executed and filed and appropriate and reasonable sureties posted or continued as a condition precedent to allowing the defendant to be arraigned without personally appearing before the court.

(E) Pleas of Guilty and ~~No Contest~~ Nolo Contendere. Before accepting a plea of guilty or ~~no contest~~ nolo contendere, the court shall in all cases comply with this rule.

(1) The court shall determine that the plea is understanding, voluntary, and accurate. In determining the accuracy of the plea,

(a) if the defendant pleads guilty, the court, by questioning ~~him or her~~ the defendant, shall establish support for a finding that defendant is guilty of the offense charged or the offense to which ~~he or she~~ the defendant is pleading, or

(b) if the defendant pleads nolo contendere, the court shall not question ~~him or her~~ the defendant about ~~his or her~~ the defendant's participation in the crime, but shall make the determination on the basis of other available information.

(2) The court shall inform the defendant of the right to the assistance of an attorney. If

~~(a)~~ the offense charged requires on conviction a minimum term in jail, ~~or~~

~~(b)~~ ~~the court determines that it might sentence the defendant to jail,~~ the court shall inform the defendant that if the defendant is indigent ~~he or she~~ the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended.

~~A subsequent charge or sentence may not be enhanced because of this conviction unless a defendant who is entitled to appointed counsel is represented by an attorney or waives the right to an attorney.~~

(3) The court shall advise the defendant of the following:

(a) the mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense,

(b) that if the plea is accepted ~~he or she~~ the defendant will not have a trial of any kind and that ~~he or she~~ the defendant gives up the following rights that ~~he or she~~ the defendant would have at trial:

(i) the right to have witnesses called for ~~his or her~~ the defendant's defense at trial,

(ii) the right to cross-examine all witnesses called against ~~him or her~~ the defendant,

(iii) the right to testify or to remain silent without an inference being drawn from said silence,

(iv) the presumption of innocence and the requirement that ~~his or her~~ the defendant's guilt be proven beyond a reasonable doubt.

(4) A defendant or defendants may be informed of the trial rights listed in subrule (3)(b) as follows:

(a) on the record,

(b) in a writing made part of the file, or

(c) in a writing referred to on the record.

If the court uses a writing pursuant to subrule (E)(4)(b) or (c), the court shall address the defendant and obtain from ~~him or her~~ the defendant orally on the record~~,~~ a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.

(5) The court shall make the plea agreement a part of the record and determine that the parties agree on all the terms of that agreement. The court shall accept, reject, or indicate on what basis it accepts the plea.

(6) The court must ask the defendant:

(a) (if there is no plea agreement) whether anyone has promised the defendant anything, or (if there is a plea agreement) whether anyone has promised anything beyond what is in the plea agreement;

(b) whether anyone has threatened the defendant; and

(c) whether it is the defendant's own choice to plead guilty.

~~(6)~~(7) A plea of guilty or ~~no contest~~ nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if

(a) the court decides that the combination of the circumstances and the range of possible sentences makes the situation proper for a plea of guilty or ~~no contest~~ nolo contendere;

(b) the defendant acknowledges guilt or nolo contendere, in a writing to be placed in the district court file, ~~the court notifies~~

~~the defendant~~ and waives in writing~~, in advance of a plea, of the following:~~

~~(i)~~ ~~the sentence to be imposed in the particular case, and~~

~~(ii)~~ the rights enumerated in subrule (3)(b); and

(c) the court is satisfied that the waiver is voluntary ~~the defendant acknowledges guilt or no contest, and the sentence to be imposed, in a writing to be placed in the district court file~~.

~~(7)~~(8) The following provisions apply where a defendant seeks to challenge the plea.

(a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.103(B)(6).

(b) If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea.

(c) If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries.

~~(8)~~(9) The ~~state court administrator~~ State Court Administrator shall develop and approve forms to be used under subrules (E)(4)(b) and (c) and (E)~~(6)~~(7)(b) ~~and (c)~~.

(F) Sentencing**.**

(1) At the sentencing, the court shall:

(a)~~(1)~~ require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;

(b)~~(2)~~ give the defendant's attorney or, if the defendant is not represented by an attorney, the defendant an opportunity to review the presentence report, if any, and to advise the court of circumstances the defendant believes should be considered in imposing sentence; and

(c)~~(3)~~ inform the defendant of credit to be given for time served, if any.

(2) Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this conviction.

(G) Motion for New Trial. A motion for a new trial must be filed within 21 days after the entry of judgment. However, if an appeal has not been taken, a delayed motion may be filed within the time for filing an application for leave to appeal.

~~(G)~~(H)Arraignment; ~~Circuit Court~~ Offenses Not Cognizable by the District Court. In a prosecution in which a defendant is charged with a felony or a misdemeanor not cognizable by the district court, the court shall

(1) ~~read the complaint or warrant into the record~~ inform the defendant of the nature of the charge;

(2) inform the defendant of

(a) the right to a preliminary examination;

(b) the right to an attorney, if the defendant is not represented by an attorney at the arraignment;

(c) the right to have an attorney appointed at public expense if the defendant is indigent; and

(d) the right to ~~be released on bond~~ consideration of pretrial release.

If a defendant not represented by an attorney waives the preliminary examination, the court shall ascertain that the waiver is freely, understandingly, and voluntarily given before accepting it.

~~(H) Motion for New Trial. A motion for a new trial must be filed within 21 days after the entry of judgment. However, if an appeal has not been taken, a delayed motion may be filed within the time for filing an application for leave to appeal.~~

Rule 6.615 Misdemeanor Traffic Cases

(A) Citation; Complaint; Summons; Warrant.

(1) A misdemeanor traffic case may be begun by one of the following procedures:

(a) Service by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the district court.

(b) The filing of a sworn complaint in the district court and the issuance of an arrest warrant. A citation may serve as the sworn complaint and as the basis for a misdemeanor warrant.

(c) Other special procedures authorized by statute.

(2) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to ~~his or her~~ the defendant's guilt of the violation alleged.

~~(3) A single citation may not allege both a misdemeanor and a civil infraction.~~

(B) Appearances; Failure to Appear. If a defendant fails to appear or otherwise to respond to any matter pending relative to a misdemeanor traffic citation, the court shall proceed as provided in this subrule.

(1) If the defendant is a Michigan resident, the court

(a) must initiate the procedures required by MCL 257.321a for the failure to answer a citation; and

(b) may issue a warrant for the defendant's arrest ~~after a sworn complaint is filed with the court~~.

(2) If the defendant is not a Michigan resident,

(a) the court may mail a notice to appear to the defendant at the address in the citation;

(b) the court may issue a warrant for the defendant's arrest ~~after a sworn complaint is filed with the court~~; and

(c) if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date.

(C) [Unchanged.]

(D) Contested Cases.

(1) A contested case may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, ~~will~~ may be dismissed with prejudice.

(2) A misdemeanor traffic case must be conducted in compliance with the constitutional and statutory procedures and safeguards applicable to misdemeanors cognizable by the district court.

Rule 6.620 Impaneling the Jury

(A) Alternate Jurors. The court may direct that 7 or more jurors be impaneled to sit in a criminal case. After the instructions to the jury have been given and the case submitted, the names of the jurors must be placed in a container and names drawn to reduce the number of jurors to 6, who shall constitute the jury. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury ~~completed~~ completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

(B) Peremptory Challenges.

(1) Each ~~party in a criminal case~~ defendant is entitled to three peremptory challenges. ~~In a case involving two or more jointly tried defendants, each defendant is entitled to three peremptory challenges.~~ The prosecutor is entitled to the same number of peremptory challenges as a defendant being tried alone, or, in the case of jointly tried defendants, the total number of peremptory challenges to which all the defendants are entitled.

(2) Additional Challenges. On a showing of good cause, the court may grant one or more of the parties an increased number of peremptory challenges. The additional challenges granted by the court need not be equal for each party.

Staff Comment: On March 12, 2002, the Court appointed the Committee on the Rules of Criminal Procedure to review the rules to determine whether any of the provisions should be

revised. The committee issued its report on June 16, 2003, recommending numerous amendments to existing rules, plus some new rules. A public hearing on the committee's recommendations was held May 27, 2004.

The Court adopted the committee's recommendations with respect to the amendments of Rules 2.511, 6.102, 6.104, 6.107, 6.112, 6.303, 6.304, 6.310, 6.311, 6.402, 6.412, 6.414, 6.419, 6.420, 6.427, 6.615, and 6.620, and the adoption of a new Rule 6.428.

The Court also adopted, with modifications, recommendations made by the committee and staff to amend other rules. Rule 2.510 was amended to conform to the newly enacted 2004 PA 12 (MCL 600.1332). The Court modified the committee's recommendation concerning Rule 6.001 to include a reference to 6.102 and to limit the application of 6.445 to subrules (A) through (G). The Court adopted the committee's recommendation with regard to Rule 6.004, except that the requirement that "whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice" was retained and inserted into 6.004(A).

The Court adopted the committee's recommendations with regard to Rule 6.005 with the exception of the committee's recommendation that there be a ban on the joint representation of multiple defendants in all cases.

The Court did follow the committee's recommendation that a new Rule 6.006, Video and Audio Proceedings, be adopted and included in the rule most of the committee's recommendations. However, the Court did limit the application of the rule at trial to situations where the parties have consented to the taking of testimony of a witness by use of two-way interactive video technology. The Court also modified the committee's recommendation concerning such testimony at preliminary examinations to conform to the newly enacted 2004 PA 20 (MCL 766.11a).

Staff had recommended that a new 6.106(D)(2)(m) be adopted. The Court modified the recommendation to clarify that "the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved." Rules 6.106(E) and 6.106(I) were amended to conform to the newly enacted 2004 PA 167 (MCL 765.6) and 2004 PA 332 (MCL 765.28).

The Court modified the committee's recommendation with regard to Rule 6.110 to eliminate the conflict with MCL 766.7. The Court did not adopt the committee's recommendations to amend 6.110(C) and (D).

The committee recommended that the Court adopt a new Rule 6.111, permitting a plea of guilty or nolo contendere to be taken by a district judge in criminal cases cognizable in the circuit court after bindover immediately following the conclusion or waiver of a preliminary examination, with the consent of the defendant, defense attorney, and prosecutor. The Court accepted and expanded upon the committee's recommendation by adopting a new Rule 6.111, Circuit Court Arraignment in District Court. In addition to allowing the district judge to conduct an arraignment and accept a plea of guilty or nolo contendere in such cases, the new rule also permits pleas of not

guilty, guilty but mentally ill, or not guilty by reason of insanity. The rule also requires that such arraignment be conducted in conformity with Rule 6.113.

The Court did not adopt the committee's recommendations to strike the current 6.113(D), but instead amended the rule to incorporate the language of MCL 766.15. The committee's recommendation for a new 6.113(D) was instead adopted as a new 6.113(E).

The Court adopted most of the committee and staff recommendations concerning Rule 6.201, except that the Court did not strike the language "except so much of a report as concerns a continuing investigation" in Rule 6.201(B)(2).

Rules 6.429 and 6.431 were amended to provide that if the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence or a motion for a new trial may be filed within 6 months of entry of the judgment of conviction and sentence.

The committee's recommendation that Rule 6.610 be amended was adopted, except for committee's proposal to add a new 6.610(F) providing for discovery in district court.

The staff comment is not an authoritative construction by the Court.

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2003-04

Rescission of Administrative
Order Nos. 1990-4, 1991-5, and 1992-5

On order of the Court, Administrative Order Nos. 1990-4, 1991-5, and 1992-5 are rescinded, effective January 1, 2006.

Staff Comment: Effective January 1, 2006, plea acceptance by district court judges in felony cases is governed by MCR 6.111.

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2005

ADM File No. 2004-52

Amendment of
Rule 6.120 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 6.120 of the Michigan Court Rules is adopted, effective January 1, 2006.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 6.120 Joinder and Severance; Single Defendant

(A) ~~Permissive~~ Charging Joinder. ~~An~~ The prosecuting attorney may file an information or indictment ~~may charge~~ that charges a single defendant with any two or more offenses. Each offense must be stated in a separate count. Two or more informations or indictments against a single defendant may be consolidated for a single trial.

~~(B) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever unrelated offenses for separate trials. For purposes of this rule, two offenses are related if they are based on~~

~~(1) the same conduct, or~~

~~(2) a series of connected acts or acts constituting part of a single scheme or plan.~~

~~(C) Other Joinder or Severance. On the motion of either party, except as to offenses severed under subrule (B), the court may join or sever offenses on the ground that joinder or severance is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense. Relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. Subject to an objection by either party, the court may sever offenses on its own initiative.~~

(B) Postcharging Permissive Joinder or Severance. On its own initiative, the motion of a party, or the stipulation of all parties, except as provided in subrule (C), the court may join offenses charged in two or more informations or indictments against a single defendant, or sever offenses charged in a single information or indictment against a

single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.

(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

(a) the same conduct or transaction, or

(b) a series of connected acts, or

(c) a series of acts constituting parts of a single scheme or plan.

(2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial.

(3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.

(C) Right of Severance; Unrelated Offenses. On the defendant's motion, the court must sever for separate trials offenses that are not related as defined in subrule (B)(1).

Staff Comment: The amendments, effective January 1, 2006, of the rule reflect the recommendations of the Committee on the Rules of Criminal Procedure as requested by the Court in *People v Nutt*, 469 Mich 565 (2004).

The staff comment is not an authoritative construction by the Court.